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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	No. CR 09 - 0487 RMW
)	
Plaintiff,)	STIPULATION AND []
)	ORDER TO CONTINUE
v.)	RESTITUTION HEARING
)	
ALBERT KE-JUNG HU,)	
)	
Defendant.)	
)	

WHEREAS, the defendant ALBERT KE-JUNG HU is scheduled to appear before this Court on Monday, April 15, 2013, for a hearing on restitution in the above-entitled action;

WHEREAS, the parties have learned that Mr. Hu is currently in transit to his designated BOP facility in Lompoc, California, such that he will be unavailable to attend and participate in the hearing on April 15, 2013;

WHEREAS, the parties are advised that it will take several weeks, at least, for the BOP, in coordination with the USMS, to arrange for Mr. Hu to return to the District so as to be present for the hearing on restitution;

WHEREAS, counsel have conferred and determined that the next available date on their

STIPULATION AND [] ORDER
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1 respective calendars, mindful of the transport timing issues referenced above, is Monday, June
 2 10, 2013, at 9:00 a.m.;

3 WHEREAS, the parties have contacted this Court's deputy, who has confirmed that
 4 Monday, June 10, 2013, at 9:00 a.m., is an available and agreeable date for the Court's calendar;

5 WHEREAS, in light of the foregoing, the United States, the defendant, and the probation
 6 officer all jointly request that the restitution hearing in this matter be continued until June 10,
 7 2013. The date of June 10, 2013 proposed by the parties is outside the ninety (90) day
 8 post-sentencing deadline for the determination of restitution put forward in 18 U.S.C. §
 9 3664(d)(5). (The 90th day after sentencing would be April 16, 2013). However, both the
 10 Supreme Court and the Ninth Circuit have both ruled that the 90 day limit on the determination
 11 of victims losses in 18 U.S.C. § 3664(d)(5) is procedural rather than jurisdictional, that the time
 12 frame was established for the benefit of the potential victims, not the defendant, and that a
 13 district court judge has the power to impose a restitution award more than 90 days after
 14 sentencing. *See, e.g., Dolan v. United States*, 130 S.Ct. 2533 (2010); *United States v. Moreland*,
 15 622 F.3d 1147, 1172 (9th Cir, 2010). Furthermore, the defendant is stipulating that a
 16 continuance beyond the 90 days deadline is appropriate and agrees not to raise any challenge to
 17 his restitution order based on that deadline.

18 THEREFORE, the parties jointly request and stipulate that the sentencing in this matter
 19 be continued until **Monday, June 10, 2013, at 9:00 a.m.**

20 **IT IS SO STIPULATED:**

21 DATED: 4/11/2013


/s/
 JERRY FONG
 Attorney for ALBERT KE-JUNG HU

23 DATED: 4/11/2013

/s/
 TIMOTHY J. LUCEY
 Assistant United States Attorney

26 **IT IS SO ORDERED.**

27 DATED: 11/13/13


 HON. RONALD M. WHYTE
 United States District Judge